

**IN THE COURT OF DISTRICT JUDGE-2:
NORTH, ROHINI COURTS COMPLEX: DELHI**

In the matter of:-

CNR No.DLNT01-008425-2016
CS DJ No. 60108/2016

DAVINDER SINGH

.....Plaintiff

Vs.

MEENA KAPOOR

.....Defendant

09.06.2025

Present : Sh. Parth Mahajan, counsel for the plaintiff (through VC).

Plaintiff is physically present in the court.

Sh. Jawahar Narang, counsel for the defendant.

Previous cost of Rs.7000/- has been paid by way of demand draft to the plaintiff.

Counsel for the defendant presses his application u/s 151 CPC dated Nil, supported by affidavit dated 19.10.2024 for placing on record photocopy of demand draft dated 10.07.2013 and copy of pay slip to prepare this demand draft.

ORDER

1. Counsel for the defendant states that he wants to bring to notice of the court that settlement was entered into between the parties and these documents will show the settlement.

2. Per contra, counsel for the plaintiff states that the application is delayed and be dismissed.

3. Heard. File perused.

4. The written statement was filed by the defendant. Same is dated 13.07.2011. The documents sought to be produced, are subsequent documents, which even otherwise could have been put to the plaintiff witness during cross-examination, as per law.

5. **The application of defendant is allowed. Documents are taken on record subject to all just exceptions.** Plaintiff, however, will be at liberty to discredit the documents, as per law during the evidence.

Counsel for the plaintiff presses his application u/o 39 Rule 1 & 2 CPC.

ORDER ON APPLICATION U/O 39 RULE 1 & 2 CPC

Arguments by counsel for the plaintiff.

1. Counsel for the plaintiff argues that in para 2 to 4 of reply on merits, the defendant has stated that earnest money stood forfeited as time was of essence of contract and it is argued that the Agreement to Sell dt.23.04.2008 stands admitted.

2. It is further argued that possession is admittedly with the defendant and thus no prejudice will be caused to the defendant. It is further argued that the property bearing No. 1748, Ground Floor, Outram Lines, Kingsway Camp, New Delhi-110009, built on land measuring 160 square yards, in the layout plan under Re-development Scheme Kingsway Camp, New Delhi-110009, New Delhi (hereinafter referred to as suit property) deserves to be

preserved during pendency of the trial as the Agreement to Sell and payment of part consideration amount is admitted. Whether the plaintiff was ready and willing to perform the remaining part, will be a moot point during the trial.

Arguments by counsel for the defendant

3. It is argued by counsel for defendant that the target date was 20.11.2009 and plaintiff had not shown his readiness and willingness. No financial capacity to fulfill the Agreement to Sell has been shown, so the application deserves dismissal.

4. Heard. File perused.

SCOPE OF INTERVENTION BY COURT :

5. In the case of *Gujarat Bottling Co. Ltd. v. Coca Cola Co. reported in 1995 (5) SCC 545*, the Hon'ble Supreme Court, while discussing the factors to be considered by the Courts in exercise of the discretion under Order XXXIX Rule 1 & 2 CPC, has held that:

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the Court applies the following tests:

- (i) Whether the plaintiff has a prima facie case;
- (ii) Whether the balance of convenience is in favour of the plaintiff;
- (iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory is disallowed.”

APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF PRESENT CASE WHETHER THE PLAINTIFF HAS A PRIMA FACIE CASE:

6. This court has heard the rival submissions of the parties and perused the relevant record with their assistance. The Court has considered the probability of success in the trial and the comparative strength of the cases of the respective parties before it. The Court has considered that it is not necessary for the plaintiff to prove its case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case has been established.

7. Perusal of record shows that in para 2 to 4 of reply on merits, the defendant has stated that earnest money stood forfeited as time was of essence of contract and thus Agreement to Sell dt.23.04.2008 stands admitted.

8. Perusal of record shows that possession is admittedly with the defendant. No irreparable injury will be caused to the defendant by stay on creation of third party interest.

9. In considered opinion of the court, suit property deserves to be preserved during pendency of the trial as the Agreement to Sell and payment of part consideration amount stands admitted (same shows prima facie case in favour of the plaintiff).

Consideration of arguments raised by counsel for the defendant

10. The submissions on behalf of the defendant that the target date was 20.11.2009 and plaintiff had not shown his

readiness and willingness and no financial capacity to fulfill the Agreement to Sell has been shown, so the application deserves dismissal, are without merits. These submission are rejected. Whether the plaintiff was ready and willing to perform the remaining part, will be a moot point during the trial. The balance of convenience lies in favour of the plaintiff as creation of third party interest in the suit property will multiply proceedings as purchasers may take plea of bona fide purchasers. The same will prejudice the plaintiff.

CONCLUSION :

11. In totality of circumstances, **the application u/o XXXIX Rule 1 and 2 CPC, filed by the plaintiff, is allowed on account of existence of prima facie case in plaintiff's favour.** The defendant is directed not to create any third party interest in the suit property during pendency of this case. However, nothing stated in the order shall affect the merits of the case.

12. **Application stands disposed off in the above terms.**

Now to come up for framing of issues on **18.08.2025.**

**Announced in the open Court
today i.e. on 09th day of June 2025**

(Order contains 5 pages)

**(Vikram Bali)
District Judge-02, North,
Rohini Court Complex,
Rohini, Delhi**